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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RICHARD STANLEY,

Plaintiff and Appellant,

v.

DORN, PLATZ & COMPANY et al.,

Defendants and Respondents.

B198761 and B200477

(Los Angeles County
Super. Ct. No. BC341808)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Gregory W. Alarcon, Judge. Affirmed.

Beltran, Beltran, Smith, Oppel & Mackenzie and Thomas E. Beltran, for Plaintiff and Appellant.

Clare Pastore for Disability Rights Legal Center as Amicus Curiae on behalf of Plaintiff and Appellant.

Leist Law Group, Jeffrey J. Leist and David A. Myers, for Defendant and Respondent Rosemary Kay Stanley-Gilbert, as Trustee, etc., of the David Pike Stanley and Miriam La Vonne Stanley Trust.

Schock & Schock and John P. Shock for Defendant and Respondent Dorn, Platz & Company.

Richard Stanley appeals from the judgments in his suit against Rosemary Kay Stanley-Gilbert (Gilbert) and Dorn, Platz & Company (DPC; collectively defendants). Stanley sued defendants for trespass, conversion, invasion of privacy, intentional infliction of emotional distress, and negligence. He filed the suit in *propria persona* and identified himself as disabled. Stanley appeals, claiming the trial court improperly denied his request for appointed counsel as an accommodation; improperly granted summary judgment in favor of Gilbert and judgment in favor of DPC; and abused its discretion in imposing discovery sanctions against him. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2003, Stanley owned a life estate in one unit of an apartment building in Glendale. A trust established by Stanley's parents owned the building. Gilbert—Stanley's sister—was the trustee. DPC managed the building. Stanley did not live in his apartment. Instead, he lived in a “board and care” facility and used the unit mainly to store personal possessions.

In September 2003, there was a fire at the apartment building. When firefighters forced their way into Stanley's unit to combat the flames, they encountered garbage, boxes, and stacks of paper and magazines. The fire department later told DPC that Stanley's apartment was a fire hazard and might present code violations. The fire department directed DPC to clean the unit, as it planned a follow-up inspection. Within a few days of the fire, a DPC employee told Stanley that he would have to clean up his apartment.

In the following five weeks, Stanley made little or no progress in cleaning the apartment. DPC contacted Gilbert about the problem and she authorized DPC to remove the trash from the unit and remedy any fire hazard. On October 24, 2003, Stanley arrived at the building to find two men moving his possessions out of his apartment. He learned that the men were trash haulers who had already taken two truckloads of items from his apartment to the dump. Stanley retrieved some of his possessions from a truck outside the building. A few additional items that DPC had moved to a storage facility were also later returned to him.

The Litigation

On October 21, 2005, Stanley filed a lawsuit against defendants asserting causes of action for trespass, conversion, invasion of privacy, intentional infliction of emotional distress, and negligence. Stanley alleged in the complaint that he suffered from severe mental and emotional disabilities. He proceeded in propria persona and successfully applied for a waiver of court fees and costs.¹ After demurrers and motions to strike were litigated, Stanley's complaint consisted of claims for trespass, invasion of privacy, conversion, and negligence.

In February, March, and June 2006,² Stanley filed requests for accommodations pursuant to then California Rules of Court, rule 989.3.³ Using judicial council forms, Stanley indicated that he had "neurologic processing communication deficits" and "memory storage delays" or "working memory delays." As an accommodation for these impairments, he requested computer aided real time captioning and transcripts (CART), and also noted that he would need additional time "for processing." Although the court did not rule on these requests in writing, at several hearings the court ordered that a court reporter assist Stanley with "the viewing of the spoken word during the hearing pursuant to his ADA [Americans With Disabilities Act] request." The court also allowed Stanley's friend, Lew Western, to accompany and assist him.

Stanley failed to respond to some discovery requests, and provided only objections and partial responses to others. Over the course of several motions to compel, the trial

¹ In his application, Stanley indicated that he was receiving financial assistance through Supplemental Security Income (SSI) and State Supplemental Payments Programs (SSP).

² All future dates are in 2006 unless otherwise noted.

³ Subsequent references to the rules are to the California Rules of Court.

Effective January 1, 2007, rule 989.3 was renumbered without substantive changes to rule 1.100. Stanley refers to the rule by its current numbering, and we do the same in the remainder of the opinion.

court deemed admitted Gilbert's requests for admissions and assessed a total of \$5,273 in monetary sanctions against Stanley. Stanley never fully responded to defendants' discovery.

In July and August, defendants took Stanley's deposition. Stanley was unable to identify with any certainty what items the haulers or DPC had permanently removed from his apartment. He was also unable to provide any concrete information regarding the value of items he thought DPC had dumped.

On August 10, Stanley filed a motion "to implement the Americans with Disabilities Act of 1990," and requested that the court appoint counsel to assist him. Stanley argued that his "severe emotional and mental disabilities include communication disabilities of such kind and degree that PLAINTIFF without an attorney or appropriate representation cannot effectively litigate this case on its merits and, therefore and furthermore, PLAINTIFF's efforts at doing this are grossly failing; and *in forma pauperis* PLAINTIFF is so indigent that PLAINTIFF does not, and cannot, have sufficient resources to hire an attorney to do this." The motion was set for a September 12 hearing. Defendants opposed the motion. They argued that Stanley had not established that he was disabled and that he had no right to counsel.

On August 30, Gilbert filed a motion for summary judgment or alternatively summary adjudication.

On September 13, the trial court concluded that Stanley had not demonstrated that he suffered from a disability as defined by the ADA. The court therefore denied Stanley's motion requesting that counsel be appointed as an accommodation.

On November 1, Stanley filed an opposition to Gilbert's motion for summary judgment, but he failed to submit a separate statement of disputed and undisputed facts. He also did not append any evidence to his opposition. On November 15, the trial court granted Gilbert's summary judgment motion. The trial court also awarded Gilbert a total of \$8,575.58 in costs and previously unpaid sanctions awards. Stanley timely appealed.

On December 8, Stanley filed an ex parte motion to continue the December 12 trial date. Stanley argued that his disabilities and lack of counsel made it impossible for

him to be prepared for trial. The motion included a declaration that attempted to establish that Stanley was disabled, pointing out that the court had already provided some accommodations to him. Stanley also attached a copy of a county-issued transportation card identifying him as disabled. He further indicated that he had an appointment for a psychological evaluation, which he expected would result in further evidence of his disability. The trial court denied the motion.

DPC filed a motion in limine seeking to exclude evidence Stanley had not produced in discovery. This included all evidence about the items Stanley alleged DPC had removed from his apartment or destroyed, and the value of any such items. On December 12, the day of trial, the trial court granted DPC's motion in limine. The court subsequently granted a motion for judgment pursuant to Code of Civil Procedure section 631.8. Stanley timely appealed.

On December 17, 2007, we granted Stanley's motion to consolidate the two appeals.

DISCUSSION

I. Stanley's Accommodation Request Under Rule 1.100

A. Introduction

Stanley asserts three claims relevant to his request for accommodation: (1) the trial court erred in finding that Stanley was not disabled; (2) the trial court erred by failing to appoint counsel to represent Stanley as an accommodation; and (3) appointed counsel was necessary to protect Stanley's constitutional right to privacy. We address these issues in turn.

B. Rule 1.100

Rule 1.100 states and implements the policy of the California courts to "ensure that persons with disabilities have equal and full access to the judicial system." (Rule 1.100(b).) The rule establishes a procedure for a disabled person to request an accommodation. Rule 1.100(a)(3) defines accommodations as "actions that result in court services, programs, or activities being readily accessible to and usable by persons

with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment, devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to court services, programs, or activities, alteration of existing facilities by the responsible entity may be an accommodation.”

Under rule 1.100(c)(1), requests for an accommodation “may be presented ex parte on a form approved by the Judicial Council, in another written format, or orally.” Requests “must include a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The court, in its discretion, may require the applicant to provide additional information about the impairment.” (Rule 1.100(c)(2).) An applicant must submit a request at least five court days before the requested implementation date, although the court may waive the requirement. (Rule 1.100(c)(3).) Requests are to be forwarded to the court’s ADA coordinator. (Rule 1.100(c)(1).)

Once the request is submitted, the court “must consider, but is not limited by, California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990, and other applicable state and federal laws in determining whether to provide an accommodation or an appropriate alternative accommodation.” (Rule 1.100(e)(1).)

The court may deny a request for an accommodation only when it determines that: (1) the applicant fails to satisfy the requirements of the rule; (2) the requested accommodations “would create an undue financial or administrative burden on the court;” or (3) the requested accommodation “would fundamentally alter the nature of the service, program, or activity.” (Rule 1.100(f); *In re Marriage of James M. and Christine J.C.* (2008) 158 Cal.App.4th 1261, 1273 (*Marriage of James M.*))

C. The Trial Court's Conclusion that Stanley Was Not Disabled

Stanley argues that because the trial court had already granted him some accommodations it could not later determine that he was not disabled. The amicus curiae argues that the trial court had an affirmative duty to conduct an individualized fact-specific inquiry to determine whether Stanley was disabled.

It is true that the trial court granted Stanley accommodations throughout the litigation -- the court provided CART services and allowed Western to assist him during the litigation, including at court hearings. And, the trial court denied Stanley's motion seeking appointed counsel on the ground that he had not established that he was disabled under the ADA.⁴ However, the trial court's "not disabled" finding did not result in a complete denial of accommodations. Rather, the court's denial of Stanley's motion "to implement the ADA" meant that he did not receive the accommodation he requested: appointed counsel.

Even if the trial court finds a litigant disabled, it must still determine whether to grant a requested accommodation under rule 1.100. Further, the court is not required to award *unreasonable* accommodations, even though a litigant is disabled. This is reflected in rule 1.100(f), which explicitly permits the court to deny a requested accommodation that would place an undue burden on the court or would fundamentally alter the nature of court services.

Moreover, inherent in the rule is the concept that an accommodation should be related to the applicant's limitations caused by the disability. A physically disabled litigant who cannot enter the courthouse without a wheelchair ramp but has perfect vision would not be properly accommodated by the provision of a reader for the blind. It would not make sense to accommodate a blind litigant with unimpaired hearing by giving her a device for a person who is hearing impaired. These mismatched accommodations would

⁴ Stanley's "motion to implement the ADA" was clearly a request for an accommodation. Under rule 1.100(c)(1), an applicant may submit accommodation requests in formats other than the judicial council form.

not be reasonable or appropriate, and if requested, the trial court would properly deny them. (Cf. *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 938 (conc. & dis. opn. of Kennard, J.) [noting that under the [Fair Employment and Housing Act], “determining whether an employee-proposed accommodation is reasonable requires consideration of its benefits to the employee (including its effectiveness in meeting the employee’s disability-related needs and enabling the employee to competently perform the essential job functions)”]; *Wood v. Crown Redi-Mix, Inc.* (8th Cir. 2003) 339 F.3d 682, 687 [there is no claim under the ADA if the reasonable accommodation requested is unrelated to the limitation caused by the disability].)

Thus, even if the trial court impliedly found that Stanley was disabled, that finding alone did not end the analysis under rule 1.100. The issue remained whether the requested accommodation could or should be granted. As discussed in greater detail below, we conclude that Stanley did not demonstrate that appointed counsel was an appropriate or reasonable accommodation for his claimed disability. Because the trial court appropriately denied that request, we find that if there were any error in the “no disability” finding, it was harmless. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Century Sur. Co. v. Polisso* (2006) 139 Cal.App.4th 922, 963 (*Century Sur.*).)

D. Stanley Was Not Entitled to Appointed Counsel as an Accommodation

We start with the observation that no case has ever held that appointed counsel is an appropriate accommodation as defined by the rules we have set forth. Further, we take no position on whether appointed counsel could ever be a reasonable accommodation in an appropriate case where an individual’s disability effectively means the pro se appearance deprives the litigant of meaningful access to the court. We simply find that Stanley did not present sufficient evidence to warrant appointed counsel in this particular case.

First, the record Stanley presented to the court did not contain much information about the exact nature of Stanley’s alleged disability. Indeed, his requests for accommodations indicated only that he had “memory storage delays,” “neurologic processing communication deficits” and “working memory delays.” The record reveals

that Stanley could read, write, speak, listen, and analyze. Faced with such a presentation of evidence, we cannot fault the trial court for denying the appointment of counsel. He did not establish that the limitations caused by his alleged disability would properly be accommodated by appointed counsel. (Cf. *Memmer v. Marin County Courts* (9th Cir. 1999) 169 F.3d 630, 633 [to establish an ADA violation, disabled litigant was required to establish the existence of specific reasonable accommodations the court failed to provide].)

In addition, Stanley's request for counsel was based largely on the fact that he was having difficulty as a pro se litigant, which is something the ADA rules were not meant to address. As we have noted, rule 1.100 implements the policy of the courts to provide equal and full access to the judicial system, in accordance with California law and the ADA. Under Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12312.) Similarly, California's Unruh Civil Rights Act provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their . . . disability, medical condition . . . are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b); see also Civ. Code, § 54.) In accordance with these provisions, rule 1.100 defines accommodations as "actions that result in court services, programs, or activities being readily accessible to and usable by persons with disabilities." (Rule 1.100(a)(3).)

In this case, the services of an attorney as an accommodation would not have been analogous to equipment for a person with a hearing disability, a wheelchair ramp, or the services of a reader or certified interpreter. Such accommodations help a litigant who is disabled hear the proceedings, physically navigate the court facility, or receive a literal recitation of documents or proceedings. But an attorney does not merely facilitate access. Instead, an attorney must serve as fiduciary, advisor, and advocate, who, in a litigation context, runs the case with the benefit of specialized education and experience. (*Lee v.*

State Bar (1970) 2 Cal.3d 927, 939; *Nichols v. Keller* (1993) 15 Cal.App.4th 1672, 1683-1684; *Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126.)

We believe Stanley's request for appointed counsel goes beyond an "accommodation" as defined by the rule when applied to the limitations he attributed to his disability. His explanation for wanting appointed counsel related almost entirely to his deficiencies as a pro se litigant, rather than the limitations caused by his claimed disability. Rule 1.100 is not intended to address the difficulties a litigant faces due to an inability to afford counsel, as opposed to those presented by a disability. The trial court indicated it would not appoint counsel to represent Stanley, and it was not required to do so under rule 1.100. (Cf. *Weinreich v. Los Angeles County Metropolitan Transportation Authority* (9th Cir. 1997) 114 F.3d 976, 978 [under Title II of the ADA, agency had no obligation to accommodate a disabled plaintiff's financial inability to comply with agency rule].)

Authorities interpreting the ADA support this conclusion. Under Title II of the ADA, "public entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons. [Citations.]" (*Townsend v. Quasim* (9th Cir. 2003) 328 F.3d 511, 518.) The United States Department of Justice Technical Assistance Manual also provides instructive guidance:

"The ADA provides for equality of opportunity, but does not guarantee equality of results. The foundation of many of the specific requirements in the Department's regulations is the principle that individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services [¶] . . . [¶] On the other hand, as long as persons with disabilities are afforded an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services, the ADA's guarantee of equal opportunity is not violated." (U.S. Dept. of Justice, Title II, Technical Assistance Manual (1993) § II-3.3000.)⁵

⁵ The Technical Assistance Manual is available online at <<http://www.ada.gov/taman2.html>> (as of Jan. 6, 2009).

Further, Title II regulations indicate that the ADA does not require public entities to provide personal or individually prescribed devices. (28 C.F.R. § 35.135.) Thus, in *Blatch ex rel. Clay v. Hernandez* (S.D.N.Y. 2005) 360 F.Supp.2d 595, 630, the court rejected the claim that a city housing agency was required to appoint guardians or expert representatives for all mentally disabled persons subject to an adverse housing proceeding. The court noted that “such individualized personal aids or assistance are beyond the scope of reasonable accommodations mandated by the Disability Rights Statutes. Like prescription eyeglasses made to meet an individual’s particular vision deficits or assistance with personal hygiene, individualized guardianship, analytical or advocacy services are personal aids, the provision of which is not required by the statutes, particularly as there is no evidence in the current record that the [New York City Housing Authority] provides such assistance to persons who are not mentally disabled.”⁶ (*Ibid.*)

Here, Stanley requested an accommodation that is substantially different from the services the courts provide to nondisabled pro se litigants in most civil litigation. No California court or statute has established a general right to counsel in civil cases. (*County of Santa Clara v. County Superior Court* (1992) 2 Cal.App.4th 1686, 1690, fn. 3 (*Santa Clara*); *Hunt v. Hackett* (1973) 36 Cal.App.3d 134, 137-138.) “On the contrary, the general rule is that there is no due process right to counsel in civil cases. [Citation.] Generally speaking, the right to counsel has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation. (*Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 25; *Salas v. Cortez* (1979) 24 Cal.3d 22, 34.)” (*Walker v. State Bar of California* (1989) 49 Cal.3d 1107, 1116; see also *Iraheta v. Superior Court* (1999) 70 Cal.App.4th 1500, 1503, 1508 (*Iraheta*).) In this case, Stanley was not at risk of losing his physical liberty. And Stanley had no statutory right to

⁶ Likewise, in *DiNapoli v. City of New York* (S.D.N.Y. 2008) 37 NDLR 130 [2008 WL 2695094], the district court concluded that a city agency did not fail to reasonably accommodate a disabled veteran by declining to appoint counsel to represent him at a weapons permit revocation hearing. Other accommodations were provided to allow the veteran to attend and participate.

appointed counsel as litigants may have in juvenile dependency or conservatorship proceedings. (Welf. & Inst. Code, § 317; Prob. Code, §§ 1471, 1472.) Denying Stanley appointed counsel did not prevent him from receiving a service that the court otherwise provides.⁷

Stanley offers only *Marriage of James M.*, *supra*, 158 Cal.App.4th 1261 to support his argument that counsel should have been appointed in this case. We disagree that *Marriage of James M.* supports Stanley's arguments, but the case offers a helpful contrast. In *Marriage of James M.*, the appellate court reviewed the denial of an accommodation in a marital dissolution case. The wife suffered from bipolar disorder, breast cancer, and non-Hodgkin's lymphoma. (*Id.* at pp. 1273-1274.) It was undisputed that she was disabled under the ADA. (*Marriage of James M.*, at pp. 1273-1274.) The wife requested and received a trial continuance as an accommodation. She subsequently had surgery to remove a cancerous tumor, her attorney withdrew because she was unable to pay him, and she was hospitalized at a psychiatric facility. (*Id.* at pp. 1268-1269.) Following this series of events, the wife again requested a trial continuance as an accommodation. The trial court denied the request and trial proceeded in the wife's absence. (*Id.* at pp. 1270-1271.)

On appeal, the court found that the lower court erred by failing to make a required finding under rule 1.100(f) to deny the requested accommodation. The court further concluded that none of the rule's three grounds for denying an accommodation applied, and the trial court should have continued the trial to accommodate the wife's disability. (*Marriage of James M.*, *supra*, 158 Cal.App.4th at pp. 1275-1276.) The court also

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Indeed, without statutory authority, the trial court has no way to effectuate an appointment of counsel. "[E]ven where a court must or may appoint counsel, it cannot order a public entity to pay attorney fees absent statutory provision for such payment. [Citations.]" (*Santa Clara*, *supra*, 2 Cal.App.4th at p. 1694.) Nor may the court compel an attorney to provide free legal services to indigent litigants. (*Cunningham v. Superior Court* (1986) 177 Cal.App.3d 336.) The trial court also does not have the authority to compel the public defender to represent litigants except as provided by statute. (Gov. Code, § 27706; *Littlefield v. Superior Court* (1979) 98 Cal.App.3d 652, 654-655.)

suggested that on remand, a pendente lite needs-based attorney fees award to the wife might be justified under Family Code section 2030 to permit the case to move forward despite the wife's disability and illness. (*Marriage of James M.*, at p. 1277.) The wife had not requested appointed counsel as an accommodation, and the court did not consider the issue. Thus, *Marriage of James M.* does not stand for the proposition that a trial court may or should appoint counsel as a reasonable accommodation in a civil case in which appointed counsel would otherwise be unavailable.⁸ (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 900, fn. 7.)

Yet, in *Marriage of James M.*, *supra*, 158 Cal.App.4th 1261, the trial court's refusal to continue the case denied the wife of all meaningful access to the proceedings. (*Id.* at p. 1274.) Due to her disability and medical condition, she simply was unable to attend trial. In contrast, here Stanley was able to participate in the proceedings, just not as successfully as a *represented* litigant. Stanley contended that his disabilities affected his ability to participate in the litigation, but his explanation for why appointed counsel would remedy the problem addressed difficulties faced by disabled and nondisabled pro se litigants alike: a lack of legal experience and unfamiliarity with civil litigation. (*Iraheta*, *supra*, 70 Cal.App.4th at p. 1513.)

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Some commentators have opined that counsel should be appointed for disabled litigants who cannot afford to retain an attorney, either as a reasonable accommodation under the ADA, or as a constitutional right. (See *Quail v. Municipal Court* (1985) 171 Cal.App.3d 572, 577 (conc. & dis. opn. of Johnson, J.); Lisa Brodoff et al., *The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 Seattle J. for Soc. Just., 2004, at 609.) To date, there is no legal authority for this proposition. The amicus curiae points us to a truancy proceeding from Washington State, in which the court appointed counsel for a disabled minor as a reasonable accommodation. However, the minute entry memorializing the court's order provides little of persuasive value. We note that the court ordered counsel appointed from those "generally contracted to provide representation in truancy matters." Further, it appears that in some circumstances truants are entitled to counsel. (See *In re J.L.* (Wash.App. 2007) 166 P.3d 776, 781-782.) It is unclear whether appointed counsel was otherwise available to the minor or required under Washington law.

Despite the trial court’s finding that Stanley was not disabled, it provided him accommodations. The ultimate and challenged result of the “no disability” finding was that Stanley did not receive appointed counsel, and Stanley was not entitled to appointed counsel as an accommodation under rule 1.100. Given Stanley’s own description of the limitations caused by his alleged disability—as opposed to his difficulties in prosecuting the case without an attorney—appointed counsel did not match his disability-related limitations, such as being a slow reader. Instead, appointed counsel went well beyond rule 1.100’s policy of providing disabled persons with full and *equal* access to court proceedings. As a result, we cannot conclude that any trial court error in finding Stanley not disabled led to a miscarriage of justice. Reversal is not warranted.

II. Stanley Fails to Demonstrate that He Had a Right to Appointed Counsel to Prosecute His Invasion of Privacy Claim

We need only briefly address Stanley’s argument that the trial court should have determined whether the appointment of counsel was necessary to protect and vindicate his constitutional right to privacy. As explained above, there is only a limited due process right to counsel in civil cases. In general, the right only applies when a litigant faces a loss of physical liberty if he loses the litigation. (*Iraheta, supra*, 70 Cal.App.4th at p. 1508.) Stanley argues at length that he had a viable privacy claim, but he fails to make any argument or cite any authority to support his contention that he therefore was entitled to appointed counsel to prosecute that claim. “ ‘Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.’ [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

III. Gilbert's Motion for Summary Judgment

A. Background

Gilbert filed a motion for summary judgment, or in the alternative, adjudication of each of the causes of action asserted in the second amended complaint. Gilbert contended that she did not hire, control, or instruct DPC and therefore could not be held liable for its actions. She further argued that Stanley could not establish that he had been harmed because he could neither specifically say what had been taken from the apartment, nor determine the value of anything that was taken. Gilbert alternatively argued that undisputed material facts demonstrated that Stanley did not have a reasonable expectation of privacy in his apartment, or that the intrusion was justified because the unit was a fire hazard. As to trespass, Gilbert asserted that she did not personally trespass, and DPC's trespass was necessary to remedy the fire hazard. In addition, Gilbert argued that Stanley could not establish that she was negligent because she acted only to address a fire hazard that Stanley created and failed to cure.

In opposition to the motion, Stanley challenged several of Gilbert's undisputed facts. Stanley charged that an inference could be drawn from Gilbert's declaration that DPC acted as her agent, and that the content of Gilbert's instructions to DPC was disputed. Stanley also indicated that he could provide evidence of the emotional distress he suffered as a result of Gilbert's actions. However, Stanley did not attach any evidence or file a statement of undisputed and disputed facts.⁹

The trial court granted summary judgment.

B. Stanley Has Not Demonstrated Error

On appeal, Stanley argues that the trial court erred in granting summary judgment because it improperly determined Gilbert had a right to tell DPC to comply with the fire

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Stanley also argued that the court should reconsider its ruling on his motion for an accommodation. He explained that he had been unable to gather evidence or to provide a better opposition due to his disabilities and lack of counsel.

department's order. Stanley contends that because he had a life interest in his unit, neither Gilbert nor DPC had a right to do anything to the apartment.

However, the court did not find that Gilbert had the right to direct DPC to clean out Stanley's unit. Neither was its ruling based on Stanley's rights as a life interest holder. To the contrary, the trial court found that Gilbert was not liable "for the actions of DP&C (or its rubbish haulers) because it has the right and responsibility to control how it manages the apartment building. . . . The general rule is that the employer is not liable for its independent contractor's negligence or other torts. [Citation.]" The trial court alternatively granted summary judgment on the ground that "[e]ven assuming Gilbert-Stanley is liable for DP&C's conduct, Plaintiff cannot prove that he suffered damages as result of the loss of his personal items because he has failed to establish what items were taken, or their value. [Citation.] Plaintiff can only speculate as to the items that are missing. [Citation.] Every cause of action alleged requires a showing of damages in order for the plaintiff to recover. [Citation.]" This finding had nothing to do with Stanley's rights as a life interest holder.

We cannot address a claim of error based on a ruling that was not, in fact, made. Moreover, Stanley does not otherwise contend that there were triable issues of fact that rendered summary judgment or summary adjudication improper. Although we review the record de novo on appeal from a grant of summary judgment, it is not our place to construct arguments to undermine the judgment where the appellant has failed to do so. (*Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 230.) This court will not "act as counsel for appellant by furnishing a legal argument as to how the trial court's ruling was prejudicial." (*Century Sur.*, *supra*, 139 Cal.App.4th at p. 963.)

IV. The Judgment in Favor of DPC

On appeal, Stanley contends that the trial court's judgment in favor of DPC was "based entirely on the assumption that DP&C's contractual rights and duties as property manager of the building included Unit B; that assumption was incorrect." However, Stanley did not include in the record the transcript from the day of trial and the trial court

did not issue a statement of decision.¹⁰ Even if Stanley is correct in asserting that his argument challenging the judgment presents only a question of law, we cannot resolve the proposed legal question based on the record before us. Appellant must provide an adequate record to establish error. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132, fn. 3.) What record there is does not indicate that the trial court found that DPC had particular rights with respect to Stanley's unit.¹¹ Yet, this is the issue Stanley asks us to address. As Stanley has failed to supply us with the record necessary to consider his challenge to the judgment, we must therefore affirm. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.)

V. The Discovery Sanctions Assessed Against Stanley

A. Background

i. Gilbert's discovery

On March 27, Gilbert served Stanley with form interrogatories, special interrogatories, requests for admissions, and requests for production of documents. Gilbert's counsel agreed to extend the deadline for the discovery responses to May 17, but he informed Stanley and Western that he would not agree to further extensions. On April 13, Gilbert's counsel sent Stanley a letter confirming the extension and warning that if Stanley did not respond by the new deadline, "this may have a negative effect on your lawsuit, and having given you ample time there will be no further extensions of the deadlines to respond[.]"

¹⁰ Stanley only designated two hearings to be transcribed and included in the record. Stanley requested transcripts of the September 12 and November 14, 2006 hearings. Gilbert separately designated five other transcripts, not including December 12, 2006, when the court ruled on DPC's motion in limine and granted judgment for DPC.

¹¹ According to DPC, "[a]s the Appellant was [in] effect precluded from introducing any evidence of his damages by the granting of the Motion in Limine, the court on Dorn Platz's motion granted a judgment as to all of the causes of action for Dorn Platz pursuant to Code of Civil Procedure § 631.8." The only relevant documents in the record are the trial court's ruling granting DPC's motion in limine and the judgment.

Stanley did not respond to the requests for admissions, requests for production of documents, or form interrogatories. He eventually provided partial and incomplete responses to the special interrogatories. For example, in response to demands that he state all facts supporting the contentions in the complaint, Stanley offered only conclusory allegations, and indicated that he could not yet set forth all facts. In answer to other interrogatories, Stanley stated only that he could not respond fully, and provided no further answer. His response to numerous interrogatories was that it would be too time consuming to respond.

On June 19, Gilbert's counsel again wrote to Stanley, informing him that if he did not respond to the discovery requests within seven days, Gilbert would file motions to compel responses and seek monetary sanctions. On June 20, Gilbert's counsel sent a meet and confer letter regarding Stanley's responses to the special interrogatories. The letter demanded supplemental responses within seven days. On June 24, Stanley responded by letter. Stanley wrote that neither he nor Western had anticipated how long it would take to respond to discovery. He informed Gilbert that he intended to file a motion seeking a further extension by July 21. Stanley also answered the meet and confer letter. His letter was framed as an "inquiry" to Gilbert's counsel in which he questioned how he could indicate that he had made a reasonable good faith effort to obtain the information demanded in the interrogatories, since much of the information was in the possession of the defendants. Despite his stated intent to file a motion seeking a further extension, he did not do so.

On June 30, Gilbert filed motions to compel responses to the discovery requests. Stanley did not file oppositions to the motions. At an August 11 hearing, Stanley argued that he had not had the time to respond to discovery, in part because he was still searching for legal counsel. He further explained that he was overwhelmed by the complexity of the discovery requests, and contended that he needed an attorney. The

court granted the motion to compel responses, deemed the requests for admissions admitted, and awarded Gilbert a reduced monetary sanction of \$2,610.¹²

Stanley did not comply with the court's order compelling discovery responses and payment of sanctions. On August 30, Stanley filed an ex parte motion seeking to stay imposition of the discovery sanctions until after it ruled on his motion for an accommodation. The trial court denied the ex parte motion. On September 12, Gilbert filed a motion seeking a terminating sanction, or alternatively an issue sanction prohibiting Stanley from claiming any emotional distress damages, and further monetary sanctions. Stanley opposed the motion, arguing that Gilbert had ignored his disabilities and the "legal constraints" that accounted for his failure to comply with the court's order, and that his failure was not willful. The trial court stated it could not afford Stanley special leniency due to his pro se status. However, the court declined to grant a terminating or issue sanction. Instead, the court again ordered Stanley to respond to Gilbert's discovery, and awarded an additional \$1,823 in monetary sanctions, reduced from Gilbert's request of \$2,073.

ii. DPC's discovery

On August 17, DPC filed motions to compel further responses to special interrogatories and requests for production of documents. Stanley had responded in part to the interrogatories by objecting that they could not be answered and that it was not possible to make a reasonable and good faith effort to obtain the information from other persons. Stanley opposed the motions. On September 20, the trial court found that Stanley had not provided sufficient responses to the special interrogatories and granted DPC's motion to compel further responses.

The trial court also found that DPC had shown good cause in seeking to compel further responses to its requests for production of documents. However, DPC failed to

¹² Gilbert had requested \$4,360 in sanctions.

file a separate statement under rule 335(a)(3),¹³ so the trial court denied the motion. The court assessed a reduced sanctions award of \$840.00 with respect to the motion to compel further interrogatory responses.¹⁴ The court acknowledged Stanley's pro se status, but again noted that Stanley was to be held to the same standard as a represented party. The court found Stanley did not act with substantial justification and that the imposition of sanctions was not otherwise unjust.

B. Discussion

Stanley argues that sanctions were improper because he did not have counsel and was unable to understand and comply with discovery due to his mental impairment. He also contends that the sanctions were unjust given his inability to pay and his good faith attempts to comply with the discovery requests. We conclude that the trial court did not abuse its discretion in assessing the sanctions. (*Liberty Mutual Fire Insurance Company v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102 (*Liberty Mutual*).)

Under Code of Civil Procedure section 2030.290, the trial court "shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party . . . who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Similar provisions apply to motions to compel requests for production of documents (Code Civ. Proc., § 2031.300(c)) and requests for admissions (*Id.*, § 2033.280(c)). "Sanction orders are 'subject to reversal only for arbitrary, capricious or whimsical action.' [Citations.]" (*Liberty Mutual, supra*, 163 Cal.App.4th at p. 1102; see also *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434.)

Stanley unsuccessfully opposed defendants' motions to compel. As a result, unless he acted with substantial justification or other circumstances made the imposition

¹³ Effective January 1, 2007, rule 335(a)(3) was renumbered as rule 3.1020.

¹⁴ DPC had requested \$1,290 in sanctions.

of sanctions unjust, the trial court was required to award sanctions. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1441.) Stanley's primary argument before the trial court and on appeal has been that he was in propria persona and therefore had difficulty responding to discovery. But as the trial court correctly noted, pro se litigants are not afforded special treatment or excused from following procedural rules. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 235.)

Stanley also alleged that his disabilities caused his inability to timely or appropriately respond to discovery. However, at the hearing on Gilbert's motion to compel Stanley said little to explain why his disabilities prevented him from responding, or what would have made a difference except having an attorney. For example, when Stanley argued that his lack of an attorney and his disabilities had made him unable to respond to Gilbert's discovery, he and the trial court engaged in the following colloquy:

“THE COURT: There's a court reporter right next to me. No other case has that. And in civil cases, you don't get a free lawyer appointed to you. So you know, I'm trying to listen to you and give you some time, but all I'm hearing from you is, you haven't done it and that the court shouldn't -- shouldn't grant the motion because you haven't done it because you haven't had enough time. I'm trying to figure out what else is your reasons. [¶] . . . [¶]

“MR. STANLEY: Okay. [¶] I -- let me state again. I think I already stated. I'll state again. [¶] The reason is because I do not have an attorney, contrary to what I earnestly desire.”

We cannot conclude on the record before us that Stanley presented information to the court that would render the imposition of sanctions unjust. Although Stanley stated that his disabilities contributed to his inability to respond, he also repeatedly indicated that it was his unfamiliarity with litigation that was the problem. As explained above, Stanley was not entitled to an attorney, or special treatment as a pro se litigant.

In addition, Stanley has offered no authority for the proposition that ability to pay is a factor to be considered with respect to discovery sanctions that are otherwise mandatory. Likewise, he has provided no authority for the contention that indigence

renders imposition of monetary sanctions unjust. Indeed, case law provides otherwise. For example, in *Midwife v. Bernal* (1988) 203 Cal.App.3d 57, 64, superseded by statute on another ground as noted in *Kohan v. Cohan* (1991) 229 Cal.App.3d 967, 969, the court rejected the argument that imposing monetary sanctions on an indigent litigant necessarily violated the litigant's rights. "A litigant proceeding in forma pauperis is held to the same standard of conduct in conducting litigation as any other party, and the power of the court to impose monetary sanctions for frivolous or harassing conduct or refusal to permit discovery is well established. . . . Monetary sanctions are always available to discourage abusive or recalcitrant behavior provided proper findings are made and appropriate procedures are followed." (*Midwife v. Bernal*, at p. 65.)

In short, Stanley failed to respond to some discovery requests at all, and responded insufficiently to others. The court ordered him to provide responses, but he failed to do so. Defendants' requests were aimed at discovering basic information about Stanley's claims. The record indicates that the trial court imposed monetary sanctions not to punish Stanley, but rather in an attempt to enable the defendants to receive the discovery to which they were entitled. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.)

We also note that the trial court carefully reviewed the amount of sanctions requested. In response to two of the three requests for sanctions, the trial court granted a reduced monetary sanction.¹⁵ We find no abuse of discretion in the trial court's imposition of monetary discovery sanctions.

¹⁵

The court reduced the amount of sanctions after determining that the stated attorney hours were inaccurate or unwarranted. In DPC's case, the trial court also reduced the requested hourly rate for attorney time based on the quality of the motion to compel.

DISPOSITION

The judgment is affirmed. Each party shall bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

COOPER, P. J.

FLIER, J.